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In the Supreme Court of the United States

EXXON MOBIL CORPORATION, PETITIONER

v.

ALLAPATTAH SERVICES, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING RESPONDENTS

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QUESTION PRESENTED

Whether the supplemental jurisdiction statute, 28 U.S.C. 1367, authorizes federal courts with diversity jurisdiction over the individual claims of named plaintiffs to exercise supplemental jurisdiction over the claims of absent class members that do not satisfy the minimum amount-in-controversy requirement.

TABLE OF CONTENTS

	Page
Interest of the United States	1
Statement	2
Summary of argument	6
Argument:	8
When the claims of the named plaintiffs in a civil diversity class action satisfy the requirements of diversity jurisdiction, Section 1367 confers supplemental jurisdiction over the related claims of unnamed plaintiffs without regard to the amount in controversy	8
A. The plain text of Section 1367 confers supplemental jurisdiction over the related claims of unnamed plaintiffs that do not satisfy the amount-in-controversy requirement	8
1. The district court had original jurisdiction over this action	10
2. The class action nature of this suit supports, rather than undermines, the exercise of supplemental jurisdiction	14
3. Section 1367(b) onfirms the propriety of supplemental jurisdiction in this case	18
B. Petitioner's reliance on policy arguments and legislative history provides no basis for overriding the plain language of the statute	21
1. Applying the statute by its terms does not lead to "absurd consequences"	21

TABLE OF CONTENTS—Continued: Page

2. Affording supplemental jurisdiction here serves the congressional purposes of fostering the efficient resolution of disputes and of providing a neutral federal forum to resolve substantial controversies 25
3. Petitioner's resort to legislative history cannot overcome the plain meaning of the text 27
Conclusion 30
Appendix 1a

TABLE OF AUTHORITIES

Cases:

Abbott Lab., In re, 51 F.3d 524 (5th Cir. 1995) 18
Aldinger v. *Howard*, 427 U.S. 1 (1976) 3
Barnhart v. *Peabody Coal Co.*, 537 U.S. 149 (2003) 19
BedRoc Ltd. v. *United States*, 124 S. Ct. 1587 (2004) 28
Brand Name Prescription Drugs Antitrust Litig., In re, 123 F.3d 599 (7th Cir. 1997), cert. denied, 522 U.S. 1153 (1998) 29
Chevron U.S.A. Inc. v. *Echazabal*, 536 U.S. 73 (2000) 16
City of Chicago v. *International Coll. of Surgeons*, 522 U.S. 156 (1997) 3, 6, 10, 11, 14, 25
Clark v. *Paul Gray, Inc.*, 306 U.S. 583 (1939) 2, 7, 13
Connecticut Nat'l Bank v. *Germain*, 503 U.S. 249 (1992) 8
Department of Hous. & Urban Dev. v. *Rucker*, 535 U.S. 125 (2002) 27
Devlin v. *Scardelletti*, 536 U.S. 1 (2002) 2
Federal Land Bank of St. Paul v. *Bismarck Lumber Co.*, 314 U.S. 95 (1941) 16

Cases—Continued: Page

Finley v. *United States*, 490 U.S. 545 (1989) 3, 4, 17, 25
Ford Motor Co. v. *McCauley*, 537 U.S. 1 (2002) 1
Gibson v. *Chrysler Corp.*, 261 F.3d 927 (9th Cir. 2001), cert. denied, 534 U.S. 1104 (2002) 15, 29, 30
Horn v. *Lockhart*, 84 U.S. (17 Wall.) 570 (1873) 23
Jinks v. *Richland County*, 538 U.S. 456 (2003) 2
Keene Corp. v. *United States*, 508 U.S. 200 (1993) 19
Lamie v. *United States Tr.*, 540 U.S. 526 (2004) 8
Newman-Green, Inc. v. *Alfonzo-Larrain*, 490 U.S. 826 (1989) 13, 22
Olden v. *LaFarge Corp.*, 383 F.3d 495 (6th Cir. 2004) 19
Oliver v. *Alexander*, 31 U.S. (6 Pet.) 143 (1832) 12
Owen Equip. & Erection Co. v. *Kroger*, 437 U.S. 365 (1978) 3
Raggor v. *Regents of the Univ. of Minn.*, 534 U.S. 533 (2002) 2, 4
Rosmer v. *Pfizer, Inc.*, 263 F.3d 110 (4th Cir. 2001), cert. dismissed, 536 U.S. 979 (2002) 11, 12, 20
Shannon v. *United States*, 512 U.S. 573 (1994) .....
Snyder v. *Harris*, 394 U.S. 332 (1969) 27
Strawbridge v. *Curtiss*, 7 U.S. (3 Cranch) 267 (1806) 2, 17, 21
Stromberg Metal Works, Inc. v. *Press Mech., Inc.*, 77 F.3d 928 (7th Cir. 1996) 22, 23, 27
Supreme Tribe of Ben-Hur v. *Cauble*, 255 U.S. 356 (1921) 2, 7, 13, 17, 21
United Mine Workers of Am. v. *Gibbs*, 383 U.S. 715 (1966) 20
United States v. *Mississippi*, 380 U.S. 128 (1965) .....
United States v. *New York Tel. Co.*, 434 U.S. 159 (1977) 16
United States v. *Ron Pair Enters., Inc.*, 489 U.S. 235 (1989) 8
Wisconsin Dep't of Corrs. v. *Schacht*, 524 U.S. 381 (1998) 13

Cases—Continued: Page

Zahn v. *International Paper Co.*, 414 U.S. 291 (1973) 2, 3, 7, 12, 13, 14, 17, 21, 24

Constitution, Statutes and rules:

U.S. Const. Art. III 3, 27
Judicial Improvements Act of 1990, Pub. L. No. 101-650, 104 Stat. 5089 3
28 U.S.C. 1292(b) 5
28 U.S.C. 1331 ..... 3, 11
28 U.S.C. 1332 ..... 2, 4, 10, 20
28 U.S.C. 1332(a) 12, 2a
28 U.S.C. 1332(b) 4
28 U.S.C. 1367 ..... 1, 5, 6, 11, 12, 21, 24, 27, 29
28 U.S.C. 1367(a) 3, 4, 6, 7, 9, 12, 16, 19, 20, 1a
28 U.S.C. 1367(b) ..... *passim*, 1a
28 U.S.C. 1367(c) 24, 25, 1a
28 U.S.C. 1367(c)(1) 4
28 U.S.C. 1367(c)(2) 4
Fed. R. Civ. P.:
Rule 14 ..... 16, 18
Rule 19 ..... 18, 19, 23
Rule 20 ..... 16, 18, 20, 21, 22, 23
Rule 20(a) 20
Rule 23 ..... 5, 7, 9, 14, 15, 18, 19
Rule 23(a) 16
Rule 23(b)(3) 3, 17
Rule 23(c)(1) 15
Rule 23(e)(1)(A) 15
2003 Advisory Comm. Notes Rle 15
Rule 24 ..... 18, 19, 23

Miscellaneous:

H.R. Rep. No. 734, 101st Cong., 2d Sess. (1990) 3, 26, 28
James Wm. Moore et al., *Moore's Federal Practice* (3d ed. 2004):
Vol. 5 16

Miscellaneous—Continued: Page

Vol. 15 26
Vol. 16 ..... 24, 28
Report to the Federal Courts Study Committee of the Subcommittee on the Role of Federal Courts and Their Relation to the States (Mar. 12, 1990), *reprinted in* 1 *Federal Courts Study Comm., Working Papers and Subcommittee Reports* (July 1, 1990) 26, 29, 30
Richard D. Freer, *The Cauldron Boils: Supplemental Jurisdicitom, Amount in Controversy, and Diversity of Citizenship Class Actions*, 53 Emory LJ. 55 (2004) .....
Thomas D. Rowe, Jr. et al., *Compounding or Creating Confusion About Supplemental Jurisdiction? A Reply to Professor Freer*, 40 Emory LJ. 943 (1991) 29
7 Charles Alan Wright et al., *Federal Practices and Procedures* (3d ed 2001) 20

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INTEREST OF THE UNITED STATES

This case concerns the proper scope of the supplemental jurisdiction statute, 28 U.S.C. 1367. In keeping with Congress's dual purposes in enacting the diversity and supplemental jurisdiction statutes, the United States has a significant interest in assuring a neutral federal forum for the adjudication of substantial disputes between persons of diverse citizenship and promoting the efficient resolution of disputes by permitting related claims to be resolved in one action. More broadly, the rules governing the joinder of parties and claims, particularly in class actions such as this one, have enormous consequences for the federal courts and interstate commerce. The United States has previously participated as amicus curiae in cases raising similar issues to those presented in this case and in *del Rosario Ortega* v. *Star-Kist Foods, Inc.*, No. 04-79. See, *e.g.*, *Ford Motor Co.* v.

McCauley, 537 U.S. 1 (2002); *Devlin* v. *Scardelletti*, 536 U.S. 1 (2002). The United States has also previously participated in cases addressing the proper scope of the supplemental jurisdiction statute. See *Jinks* v. *Richland County*, 538 U.S. 456 (2003); *Raygor* v. *Regents of the Univ. of Minn.*, 534 U.S. 533 (2002).

STATEMENT

1. a. Under the federal diversity jurisdiction statute, 28 U.S.C. 1332, the federal district courts have jurisdiction over civil actions when two conditions are met. First, there must be diversity of citizenship. *Ibid.* In *Strawbridge* v. *Curtiss*, 7 U.S. (3 Cranch) 267 (1806), this Court held that the statute requires "complete" diversity of citizenship, *i.e.*, that no plaintiff may have the same citizenship as any defendant in the case. In the class-action context, however, this Court has held that the requirement of complete diversity applies only to the named plaintiffs. See *Supreme Tribe of Ben-Hur* v. *Cauble*, 255 U.S. 356 (1921).

Second, the matter in controversy must exceed a specified amount, now $75,000. 28 U.S.C. 1332. That amount-in-controversy requirement has long been understood to forbid aggregation of claims when none of the plaintiffs satisfies the jurisdictional amount. See *Zahn* v. *International Paper Co.*, 414 U.S. 291, 294-295 & nn.3 & 4 (1973) (citing cases). This Court has interpreted Section 1332 to require "that multiple plaintiffs with separate and distinct claims must each satisfy the jurisdictional-amount requirement for suit in the federal courts." *Id.* at 294. Thus, while district courts sitting in diversity have jurisdiction over cases in which at least one of the plaintiffs presents claims exceeding $75,000, parties whose claims do not meet that jurisdictional amount must be dismissed. See *Clark* v. *Paul Gray, Inc.*, 306 U.S. 583, 590 (1939). In *Zahn*, this Court held that *Clark* applies in the class-action context as well; thus, Section 1332 does not authorize jurisdiction over a plaintiff, named or unnamed, in

a Rule 23(b)(3) class action whose claim does not satisfy the amount-in-controversy requirement. See *Zahn*, 414 U.S. at 300-301.

b. The supplemental jurisdiction statute authorizes federal district courts to exercise jurisdiction over claims that would not, standing alone, come within a district court's original jurisdiction, but that are so related to claims within the court's original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. See 28 U.S.C. 1367(a). The statute was enacted as part of the Judicial Improvements Act of 1990, Pub. L. No. 101-650, 104 Stat. 5089, in response to decisions of this Court delineating the doctrines of pendent and ancillary jurisdiction. See H.R. Rep. No. 734, 101st Cong., 2d Sess. 27-29 (1990); *City of Chicago* v. *International Coll. of Surgeons*, 522 U.S. 156, 165 (1997).

In *United Mine Workers of America* v. *Gibbs*, 383 U.S. 715 (1966), this Court held that district courts, when adjudicating federal-law claims within their subject-matter jurisdiction under 28 U.S.C. 1331, may also adjudicate state-law claims over which they would not otherwise have jurisdiction, if the federal-law and state-law claims "derive from a common nucleus of operative fact" and thus constitute "but one constitutional 'case'" under Article III. 383 U.S. at 725 (citation omitted). Thereafter, in a series of decisions, this Court identified various limits on a district court's ability to adjudicate claims that, although not independently within its subject-matter jurisdiction, were related to claims within its jurisdiction. See, *e.g.*, *Aldinger* v. *Howard*, 427 U.S. 1 (1976); *Owen Equip. & Erection Co.* v. *Kroger*, 437 U.S. 365 (1978).

In *Finley* v. *United States*, 490 U.S. 545 (1989), this Court held, in a suit in which original jurisdiction was based on the Federal Tort Claims Act, that the federal district courts may not exercise jurisdiction over pendent parties in the absence of congressional authorization. *Id.* at 546, 556. This Court noted, however, that "[w]hatever we say regarding the

scope of jurisdiction conferred by a particular statute can of course be changed by Congress." *Ibid.*

Congress responded to *Finley* by enacting 28 U.S.C. 1367, which provides express congressional authorization for both pendent-claim and pendent-party jurisdiction. See *Raygor* v. *Regents of the Univ. of Minn.*, 534 U.S. 533, 539-540 (2002). Section 1367(a) confers supplemental jurisdiction "over all other claims" that form part of the same case or controversy over which the district court has original jurisdiction, "[e]xcept as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute." 28 U.S.C. 1367(a). Subsection (b) delineates specific exceptions to the exercise of supplemental jurisdiction when original jurisdiction is founded solely on diversity jurisdiction under 28 U.S.C. 1332 and when "exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332." 28 U.S.C. 1367(b). A district court also may decline to exercise supplemental jurisdiction over a claim in various circumstances, such as when "the claim raises a novel or complex issue of State law" or when "the claim substantially predominates over the claim or claims over which the district court has original jurisdiction." See 28 U.S.C. 1367(c)(1) and (2).

2. This case arose from petitioner's implementation of a marketing program known as the Discount for Cash (DFC) program, through which it encouraged its retail dealers to charge their customers who paid by credit card a higher price for gasoline than their customers who paid in cash. Pet. App. 69a. In 1991, several dealers brought this action against petitioner, asserting *inter alia* that petitioner breached its contracts with respect to the DFC program by overcharging them for gasoline. *Id.* at 69a-70a; J.A. 1. The dealers sought to represent a class of approximately 10,000 similarly situated current and former dealers, Pet. App. 69a-70a, and in 1996, the district court granted their motion for class certification, *id.* at 220a-221a. In 1999, the district

court held that it possessed supplemental jurisdiction over the claims of class members that failed to independently satisfy the jurisdictional amount, *id.* at 212a-214a.

After two jury trials, respondents obtained a favorable verdict. Pet. App. 70a. During post-trial proceedings, the district court certified two questions for interlocutory appeal under 28 U.S.C. 1292(b), including whether the court properly exercised supplemental jurisdiction over the claims of class members that did not meet the amount-in-controversy requirement of Section 1332. Pet. App. 70a.

3. In a unanimous opinion, the court of appeals affirmed. Pet. App. 67a-92a. On the supplemental-jurisdiction question, the court began its statutory analysis by observing that "it is clear from the plain language of the statute that § 1367(a) is a general grant of supplemental jurisdiction, which is then narrowed for diversity cases by § 1367(b)." *Id.* at 74a (footnote omitted). The court noted the parties' agreement that the district court had original jurisdiction over the claims of the class representatives because those claims satisfied Section 1332's amount-in-controversy requirement. *Id.* at 75a. And it concluded that, because the claims of the unnamed class members "arose from the same agreements and contractual obligations as the class representatives' claims, the requirements of § 1367(a) were satisfied." *Ibid.* In addition, the court explained, "[t]he fact that Congress created explicit exceptions to § 1367(a)'s broad grant of supplemental jurisdiction [in § 1367(b)] but did not include Rule 23 among them leads us to conclude that it did not intend to prevent district courts from exercising supplemental jurisdiction over the claims of class members." *Id.* at 76a. Accordingly, the court held that Section 1367 "clearly and unambiguously provides district courts with the authority in diversity class actions to exercise supplemental jurisdiction over the claims of class members who do not meet the minimum amount in controversy as long as the

district court has original jurisdiction over the claims of at least one of the class representatives." *Id.* at 77a.

The Eleventh Circuit denied a petition for rehearing en banc. Pet. App. 1a-2a. Judge Tjoflat, joined by Judge Birch, dissented from denial of rehearing en banc, expressing the view that Section 1367 did not authorize supplemental jurisdiction over the claims of unnamed class members that do not meet the amount-in-controversy requirement. See *id.* at 2a-66a.

SUMMARY OF ARGUMENT

The plain text of Section 1367 resolves this case. Section 1367(a) confers supplemental jurisdiction over "all other claims" that are related to claims over which the district court has original jurisdiction. 28 U.S.C. 1367(a). Here, the district court has original jurisdiction over the named plaintiffs' claims, and it is undisputed that the claims of the unnamed plaintiffs are related to those claims and that none of the statutory exceptions applies. The text of Section 1367 therefore compels the conclusion that the district court may exercise supplemental jurisdiction over the unnamed plaintiffs' claims.

In arguing against that plain reading, petitioner contends that to have the requisite "original jurisdiction" in a diversity case, the district court must have original jurisdiction over the claims of *all* of the plaintiffs, including those of the class members who seek to invoke the court's supplemental jurisdiction. But "[t]he whole point of supplemental jurisdiction is to allow the district courts to exercise pendent jurisdiction over claims as to which original jurisdiction is lacking." *City of Chicago* v. *International Coll. of Surgeons*, 522 U.S. 156, 167 (1997). Petitioner's interpretation of Section 1367 cannot be squared with the statutory text or the basic theory of the *supplemental* jurisdiction statute as acknowledged in *City of Chicago*. Moreover, petitioner bases its reasoning on the incorrect premise that the presence of plaintiffs who do not meet the amount-in-controversy requirement destroys *ab initio* the district court's jurisdiction to decide the claims of the plaintiffs who do meet the requisite jurisdictional amount. In fact, as this Court made clear in both *Clark* v. *Paul Gray, Inc.*, 306 U.S. 583, 589-600 (1939), and *Zahn* v. *International Paper Co.*, 414 U.S. 291, 295-296 (1973), courts have original jurisdiction over the claims of plaintiffs whose claims meet the amount-in-controversy requirement, even while the plaintiffs whose claims are insufficient remain in the suit.

Nor does the class-action nature of this suit take the unnamed plaintiffs' claims outside Section 1367(a). While the class-action distinctions to which petitioner points may explain the protections of Rule 23, they say nothing about whether those claims fall within the terms of the supplemental jurisdiction statute. In fact, the law has been more lenient with respect to the requirements for diversity jurisdiction in class actions than in traditional joinder cases. See *Supreme Tribe of Ben-Hur* v. *Cauble*, 255 U.S. 356, 365-367 (1921).

Moreover, petitioner's explanation of Section 1367(a) cannot be squared with Section 1367(b), in which Congress provided very specific exceptions to the grant of supplemental jurisdiction in the particular context of diversity cases and specifically addressed claims by certain additional plaintiffs. 28 U.S.C. 1367(b). Dispositively, none of those exceptions applies to claims of unnamed plaintiffs asserted pursuant to Rule 23. 28 U.S.C. 1367(b). Petitioner's reading of "original jurisdiction" in Section 1367(a) would render superfluous those carefully delineated exceptions.

Finally, reading the statute by its plain terms will not result in absurd consequences, as posited by petitioner. The limitations that Congress expressly incorporated into Section 1367(b) largely preserve the traditional rules of diversity jurisdiction. Furthermore, the lines drawn by Congress reflect its judgments regarding the efficiency of allowing

related claims to be tried together in one action when the federal court undeniably has jurisdiction over the named plaintiffs' claims. This Court should reject petitioner's attempts—through its resort to supposed "rules" of statutory construction and unpersuasive legislative history—to substitute a different policy judgment.

ARGUMENT

WHEN THE CLAIMS OF THE NAMED PLAINTIFFS IN A CIVIL DIVERSITY CLASS ACTION SATISFY THE REQUIREMENTS OF DIVERSITY JURISDICTION, SECTION 1367 CONFERS SUPPLEMENTAL JURISDICTION OVER THE RELATED CLAIMS OF UNNAMED PLAINTIFFS WITHOUT REGARD TO THE AMOUNT IN CONTROVERSY

A. The Plain Text Of Section 1367 Confers Supplemental Jurisdiction Over The Related Claims Of Unnamed Plaintiffs That Do Not Satisfy The Amount-In-Controversy Requirement

The task of divining the meaning of the supplemental jurisdiction statute "begins where all such inquiries must begin: with the language of the statute itself. * * * In this case it is also where the inquiry should end, for where, as here, the statute's language is plain, the sole function of the courts is to enforce it according to its terms." *United States* v. *Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1989) (citations and internal quotation marks omitted); accord *Lamie* v. *United States Tr.*, 540 U.S. 526, 534 (2004); *Connecticut Nat'l Bank* v. *Germain*, 503 U.S. 249, 253-254 (1992). Here, the plain terms of Section 1367 confer supplemental jurisdiction over the claims of unnamed plaintiffs that do not independently meet the amount-in-controversy requirement.

Section 1367(a) provides in part that:

> Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

28 U.S.C. 1367(a). It then underscores the breadth of that grant of jurisdiction, stating that "[s]uch supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties." *Ibid.* Accordingly, under the terms of the statute, the district court has supplemental jurisdiction over the claims of unnamed plaintiffs that do not satisfy the amount-in-controversy requirement as long as: (1) the district court has original jurisdiction over the action, (2) the unnamed plaintiffs' claims are part of the same case or controversy, and (3) none of the statutory exceptions to supplemental jurisdiction applies.

It is undisputed that the second and third of those elements are met here; the unnamed plaintiffs' claims clearly derive from "a common nucleus of operative fact," *United Mine Workers of America* v. *Gibbs*, 383 U.S. 715, 725 (1966), and claims asserted pursuant to Rule 23 are not included among the exceptions to supplemental jurisdiction established by Congress in Section 1367(b). The only remaining question, therefore, is whether the district court had "original jurisdiction" so as to permit the exercise of supplemental jurisdiction over the claims of additional parties. That question must be answered in the affirmative.

1. *The district court had original jurisdiction over this action*

The district court unquestionably possessed original jurisdiction, under 28 U.S.C. 1332, over the named plaintiffs' civil action against petitioner. Complete diversity of citizenship between the named plaintiffs and petitioner is not in dispute, and petitioner concedes that the claims of the named plaintiffs satisfy the amount-in-controversy requirement for diversity jurisdiction. See Pet. i, 2; Pet. App. 75a ("The parties agree that the district court had original jurisdiction over the class representatives' claims, because they satisfied the [then-applicable] $50,000 jurisdictional minimum amount in controversy requirement.") (footnote omitted).

Petitioner nonetheless asserts (Pet. Br. 16-17, 21-24) that the district court lacked "original jurisdiction" over this "civil action" because the inclusion of claims by unnamed class members that do not satisfy the amount-in-controversy requirement purportedly operates to "destroy" *ab initio* the court's jurisdiction over the case as a whole, including even the claims of named plaintiffs that do satisfy that requirement. Petitioner's arguments rest on a faulty reading of the statutory text coupled with mistaken premises about the background law, and ultimately are contrary to the whole point of the supplemental jurisdiction statute.

a. By asserting that Section 1367(a) requires the district court to have "original jurisdiction" over the claims of *all* the plaintiffs, including the class members who seek to invoke supplemental jurisdiction, petitioner improperly collapses the original jurisdiction inquiry into the supplemental jurisdiction inquiry. This Court squarely rejected that approach in *City of Chicago*. In that case, the City of Chicago removed to federal court two state-court lawsuits that presented federal-law claims along with state-law claims over which there was no independent basis for federal jurisdiction. 522 U.S. at 160-161. The plaintiffs challenged the

existence of federal jurisdiction, asserting that the district court had to have "original jurisdiction" not simply over the federal claims, but over the state-law claims as well. *Id.* at 166-167.[1] The Court had little difficulty rejecting that argument, concluding that the district court had jurisdiction over *all* of the claims because the court had "original jurisdiction" over the federal-law claims under 28 U.S.C. 1331, and "supplemental jurisdiction" over the accompanying state-law claims under 28 U.S.C. 1367. 522 U.S. at 163-167. In so holding, the Court made clear that, as long as the district court possessed original jurisdiction over *some* of the claims asserted in the case, it possessed "original jurisdiction" over the "civil action." *Id.* at 166. Accordingly, "the relevant inquiry" respecting the accompanying claims was "whether they fall within a district court's supplemental jurisdiction, not its original jurisdiction." *Id.* at 167.

As the Court explained, moreover, the contrary interpretation urged by the plaintiffs there "would effectively read the supplemental jurisdiction statute out of the books: The whole point of supplemental jurisdiction is to allow the district courts to exercise pendent jurisdiction over claims as to which original jurisdiction is lacking." *City of Chicago*, 522 U.S. at 167. Similarly, here, "if each and every plaintiff in a diversity case must satisfy § 1332's requirements of complete 'diversity' and 'matter in controversy,' * * * then there remains no supplemental jurisdiction in a diversity action for district courts to exercise." *Rosmer* v. *Pfizer, Inc.*, 263 F.3d 110, 120 (4th Cir. 2001) (citation omitted), cert. dismissed, 536 U.S. 979 (2002).

City of Chicago thus forecloses petitioner's assertion that Section 1367(a)'s use of the phrase "civil action" means that the court must have original jurisdiction over the entire ac-

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[1] Although *City of Chicago* involved removal, "[t]he propriety of removal * * * depend[ed] on whether the case originally could have been filed in federal court." 522 U.S. at 163.

tion and "not just over a particular claim or claims." Pet. Br. 22. That assertion is also inconsistent with this Court's jurisprudence construing when jurisdiction exists over a "civil action[]" pursuant to Section 1332. 28 U.S.C. 1332(a). With respect to Section 1332's amount-in-controversy requirement, the Court has consistently held that whether jurisdiction exists over a "civil action[]" is determined on a plaintiff-by-plaintiff basis by looking separately to the amount of each plaintiff's claims, rather than by aggregating the claims of all the plaintiffs in the case. *Zahn*, 414 U.S. at 294-295; see, *e.g.*, *Oliver* v. *Alexander*, 31 U.S. (6 Pet.) 143, 147 (1832). There is no basis for construing "civil action" differently in the context of Section 1367.

The flaws in petitioner's reading of the statute are further underscored by the first sentence of Section 1367, which makes clear that original jurisdiction is judged on the basis of a subset of the claims in the case, not on the case in its entirety. That sentence provides that "in any civil action of which the district courts have original jurisdiction," supplemental jurisdiction can be exercised over "*other* claims." 28 U.S.C. 1367(a) (emphasis added). The latter clause compels the conclusion that the claims over which supplemental jurisdiction is to be exercised need not be within the district court's "original jurisdiction" and that the requirement of having original jurisdiction over a civil action is satisfied as long as any claim falls within the court's original jurisdiction. 28 U.S.C. 1367(a). As Judge Wilkinson observed, reading "'original jurisdiction' over a 'civil action' [to] mean[] that the district court must have original jurisdiction over the *entire* action at the initiation of the complaint," as petitioner does, "would render the phrase 'over all other claims that are so related to claims in the action within such original jurisdiction' virtually superfluous." *Rosmer*, 263 F.3d at 116 (quoting 28 U.S.C. 1367(a)).

b. In an effort to avoid the inevitable consequences of the statutory text, petitioner argues (Pet. Br. 22-24) that *City of Chicago* is inapposite in the diversity context and that, whatever the rule may be in federal-question cases, the presence of putative or actual class members whose claims do not meet the amount-in-controversy requirement destroys "original jurisdiction" to adjudicate the claims of parties that do satisfy the jurisdictional amount. Petitioner cites no authority for that proposition, however, and for good reason, because this Court's precedents directly refute it.

To be sure, it is generally true that "one claim against one *nondiverse* defendant destroys * * * original jurisdiction," Pet. Br. 22 (quoting *Wisconsin Dep't of Corr.* v. *Schacht*, 524 U.S. 381, 389 (1998)) (emphasis added), although that "complete diversity" rule is inapplicable to unnamed plaintiffs in a class action. See *Ben-Hur*, 255 U.S. at 365-367.[2] But it is plainly *not* true that the presence of an unnamed (or named) plaintiff whose claim fails to meet the *amount-in-controversy* requirement destroys jurisdiction over the entire action. Pet. Br. 9-10, 21, 23, 27. In fact, the law is squarely to the contrary, as has been clear at least since this Court's decision in *Clark*.

In *Clark*, this Court ruled on the merits of the claim of the party that satisfied the jurisdictional amount, *before* remanding for dismissal of the other parties' claims over which jurisdiction was lacking. 306 U.S. at 589-600. As this Court explained in *Zahn*: "Upon ascertaining on its own motion that only one of the plaintiffs in the District Court had presented a claim satisfying the jurisdictional amount, the Court [in *Clark*] reached the merits of that claim but directed the District Court to dismiss the claims of all other plaintiffs for want of jurisdiction." *Zahn*, 414 U.S. at 295-296. While *Clark* required "dismissal of those litigants whose claims do

[2] Regarding the presence of a dispensable nondiverse named plaintiff, a court may correct the jurisdictional defect nunc pro tunc by dismissing the nondiverse plaintiff, and thereby exercise jurisdiction over the remainder of the suit. See, *e.g.*, *Newman-Green, Inc.* v. *Alfonzo-Larrain*, 490 U.S. 826, 835-836 (1989).

not satisfy the jurisdictional amount," *id.* at 295, it made clear that the presence of such parties does not affect a court's jurisdiction to adjudicate the claims of other parties whose claims do satisfy the jurisdictional amount.

Petitioner thus errs in contending that "[i]f a plaintiff who fails to meet the jurisdictional minimum is part of a suit, the court's original jurisdiction is destroyed unless and until that plaintiff is dismissed." Pet. Br. 23. Instead, the named plaintiffs' claims are not meaningfully distinguishable from the federal-law claims in *City of Chicago*. Just as "[t]hose federal claims suffice[d] to make the actions 'civil actions' within the 'original jurisdiction' of the district courts" despite the existence of the accompanying state-law claims, 522 U.S. at 166, so too do the named plaintiffs' claims suffice to establish the district court's original jurisdiction over this action.[3]

2. *The class-action nature of this suit supports, rather than undermines, the exercise of supplemental jurisdiction*

Petitioner seeks to avoid the clear import of the statutory text by contending that class actions are so "fundamentally different" from other cases in which parties join together as plaintiffs that Section 1367(a) should not be read to apply to class actions. Pet. Br. 17-20. But while the "differences" to which petitioner points—such as the "potential to bind individuals to a litigated result even though those indi viduals take no part in the litigation" (*id.* at 18)—serve to explain the protections afforded by the requirements of Rule

[3] Petitioner's effort to create a special exception for diversity cases is also inconsistent with the structure of Section 1367 and the text of Section 1367(b). Congress recognized that diversity cases raise some unique concerns and addressed those concerns in Section 1367(b). Even petitioner concedes that Section 1367(b) does not exempt the claims of plaintiffs brought into the suit through Rule 23, and there is no basis for supplementing the statutory exceptions of Section 1367(b) with a non-statutory exception. See pp. 18-20, *infra*.

23, they have nothing to say about whether there is *jurisdiction* over the claims of class members under Section 1367. Indeed, all of the characteristics of class actions to which petitioner points apply equally to the claims of class members that *do* meet the jurisdictional amount, yet petitioner concedes there is jurisdiction over those claims. *Id.* at 20-21 n.7.

The nature of class actions operates to foreclose petitioner's argument tl t the existence of the class allegations in the complaint deprived the court of "original jurisdiction" at the time of filing. See, *e.g.*, Pet. Br. 16-17. As long as the named plaintiffs are completely diverse from the defendants and the claims of each named plaintiff meet the amount-in-controversy requirement (as petitioner concedes is true here, see Pet. i, 2; Pet. App. 75a), the district court has *original* jurisdiction at the time the suit is filed over *all* the claims that are then in the action—that is, the named plaintiffs' claims. Although, as petitioner contends (Pet. Br. 17-18), some protections are afforded the putative class members upon the initiation of a putative class action, the suit actually contains only the claims of the named plaintiffs—"[i]t does not become a class action until certified by the district court." *Gibson* v. *Chrysler Corp.*, 261 F.3d 927, 937 (9th Cir. 2001), cert. denied, 534 U.S. 1104 (2002). The text of Rule 23 makes that clear, by requiring an express certification order by the district court. See Fed. R. Civ. P. 23(c)(1).[4] Thus, even under petitioner's interpretation of Section 1367(a), the district court here possessed "original jurisdiction" over the entire "civil action" at the time of its filing.

[4] That conclusion is further supported by recent amendments to Rule 23, which confirm that, before class certification, the named plaintiffs can settle the suit without approval from the district court, see Fed. R. Civ. P. 23(e)(1)(A); 2003 Advisory Comm. Notes Rule 23(e)(1)(A)—just like any plaintiff in a suit not purporting to be a putative class action.

In any event, and more importantly, the distinctions regarding class actions to which petitioner points do nothing to take the claims of putative or actual class members outside the text of Section 1367(a). As explained above, the only question under Section 1367(a) is whether the claims for which supplemental jurisdiction is sought are "so related to claims in the action * * * that they form part of the same case or controversy," 28 U.S.C. 1367(a)—a requirement indisputably met here. See pp. 9-10, *supra*. And, contrary to petitioner's assertion (Pet. Br. 20), the last sentence of Section 1367(a) provides no basis for excluding the claims of unnamed plaintiffs. That sentence provides that supplemental jurisdiction "shall include" claims involving the joinder or intervention of additional parties. 28 U.S.C. 1367(a). As the use of "include" indicates, that plainly is not an exhaustive listing of the scope of supplemental jurisdiction. See *Federal Land Bank of St. Paul* v. *Bismarck Lumber Co.*, 314 U.S. 95, 100 (1941) ("[T]he term 'including' is not one of all-embracing definition, but connotes simply an illustrative application of the general principle."); see also, *e.g.*, *Chevron U.S.A. Inc.* v. *Echazabal*, 536 U.S. 73, 74 (2002); *United States* v. *New York Tel. Co.*, 434 U.S. 159, 170 n.18 (1977). Indeed, the text of subsection (b) precludes the inference of exclusivity that petitioner seeks to draw, because it makes clear that supplemental jurisdiction also encompasses claims asserted by means of impleader under Rule 14, even though "impleader" is not mentioned in the last sentence of subsection (a). See 28 U.S.C. 1367(b).[5]

[5] In any event, class actions can properly be viewed as a form of "joinder * * * of additional parties." 28 U.S.C. 1367(a). Although class actions are appropriate only when joining each class member as a *named* party is "impracticable," Pet. Br. 19 (quoting Fed. R. Civ. P. 23(a)), it would blink reality not to recognize that Rule 23 provides "a procedural device for joining parties." 5 James Wm. Moore et al., *Moore's Federal Practice* § 23.02, at 23-27 (3d ed. 2004). And it would be anomalous to read the statute to permit supplemental jurisdiction over the claims of all additional plaintiffs who could be joined as named plaintiffs under Rule 20, but to disallow supplemental jurisdiction if there were so many claimants that they could not all practically join as named plaintiffs. It would be particularly anomalous to do so with respect to additional plaintiffs whose claims do not meet the jurisdictional amount, where the addition of more plaintiffs would only increase the total amount in dispute and hence the overall significance of the controversy.

To the extent petitioner suggests (Pet. Br. 20) that the Court should be less willing to extend federal diversity jurisdiction in the class-action context than in other joinder contexts, the law is to the contrary. Since at least 1921, when this Court decided *Supreme Tribe of Ben-Hur* v. *Cauble*, the jurisdictional requirements of Section 1332 have been applied *less* restrictively in the class-action context. In that decision, the Court held that unnamed plaintiffs need not be diverse in citizenship from defendants, as long as the named plaintiffs were completely diverse from all defendants. 255 U.S. 356, 365-367 (1921). In contrast, the law has not been so lenient with respect to plaintiffs joined together under other joinder rules; this Court has read Section 1332 to require that each such plaintiff be diverse from all defendants for there to be original jurisdiction. See, *e.g.*, *Strawbridge* v. *Curtiss*, 7 U.S. (3 Cranch) 267 (1806). To be sure, in *Zahn*, this Court interpreted Section 1332 as not providing *original* jurisdiction over the claims of Rule 23(b)(3) class members whose claims do not independently meet the jurisdictional amount. 414 U.S. at 292, 300-301. But, as this Court subsequently observed in *Finley* v. *United States*, 490 U.S. 545 (1989), Congress can authorize jurisdiction to supplement the original jurisdiction provisions. *Id.* at 556. Section 1367 does precisely that, granting unnamed plaintiffs whose claims do not meet the jurisdictional amount the federal forum that has long been available to class members who are not diverse from defendants.

3. *Section 1367(b) confirms the propriety of supplemental jurisdiction in this case*

Petitioner's proffered interpretation of Section 1367(a) also fails because it cannot be reconciled with Congress's enactment of Section 1367(b), which expressly delineates the exceptions to supplemental jurisdiction in cases in which the district court's original jurisdiction, as in this case, is founded on diversity jurisdiction. Specifically, it provides in full:

> In any civil action of which the district courts have original jurisdiction founded solely on section 1332 of this title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14 ["Third-Party Practice"], 19 ["Joinder of Persons Needed for Just Adjudication"], 20 ["Permissive Joinder of Parties"] or 24 ["Intervention"] of the Federal Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.

28 U.S.C. 1367(b). The text of the statute is thus quite explicit regarding those claims that would otherwise fall within the scope of Section 1367—including claims brought by added plaintiffs—but are nonetheless excluded from supplemental jurisdiction by the terms of Section 1367(b).

Notably, and dispositively for this case, Section 1367(b) does not exclude claims brought under Rule 23. 28 U.S.C. 1367(b); see Pet. App. 76a; *In re Abbott Labs.*, 51 F.3d 524, 528 (5th Cir. 1995) ("Class actions are not among the enumerated exceptions."). Given that Congress expressly chose to exclude from supplemental jurisdiction certain claims brought under Rules 14, 19, 20, and 24, while skipping over

and not excluding claims brought under Rule 23, petitioner's invitation to construe Section 1367 as if Rule 23 appeared in the list of exceptions would violate this Court's "duty to refrain from reading a phrase into the statute when Congress has left it out." *Keene Corp.* v. *United States*, 508 U.S. 200, 208 (1993).

As the Sixth Circuit observed, "Rule 23 fits in naturally with the other rules listed in § 1367(b). All the rules listed in § 1367(b), like Rule 23, involve different ways of getting additional claims before the court, such as joinder, impleader and intervention." *Olden* v. *LaFarge Corp.*, 383 F.3d 495, 504 n.2 (6th Cir. 2004). That is particularly true because the Section 1367(b) exceptions specifically address claims brought by added plaintiffs—and excludes the claims of plaintiffs proposing to join under Rules 19 and 24, but not Rule 23. The canon *expressio unius est exclusio alterius* thus applies with full force. See, *e.g.*, *Barnhart* v. *Peabody Coal Co.*, 537 U.S. 149, 168 (2003) (noting that the canon applies when the "items expressed are members of an 'associated group or series,' justifying the inference that items not mentioned were excluded by deliberate choice, not inadvertence").

Further, the statute expressly incorporates the *expressio unius* canon in the language which begins Section 1367(a): "*Except as provided* in subsections (b) and (c) * * * the district courts shall have supplemental jurisdiction." 28 U.S.C. 1367(a) (emphasis added). As the Sixth Circuit concluded, that language "demonstrates that Congress intended the exclusions mentioned in those subsections to be exclusive." *Olden*, 383 F.3d at 504 n.2. It is therefore more than just "notable" (Pet. Br. 20) that Congress did not mention claims joined under Rule 23; it is fatal to petitioner's argument.

Petitioner fails in its attempt to harmonize subsection (b) with its reading of the statute. For example, petitioner appears to read subsection (b) as applying only to subsequently added parties or claims. See, *e.g.*, Pet. Br. 30. Nothing in the

text of the statute, however, supports such a reading. The text of subsection (b) nowhere states—as would have been simple to do—that its exceptions apply only after the initiation of a complaint. Instead, it defines its exceptions in terms of certain rules of civil procedure. The joinder rules, by their terms, apply at the initiation of a case as well as to subsequently added parties and claims. See, *e.g.*, Fed. R. Civ. P. 20(a). For example, persons injured as part of a single bus accident, who join together as plaintiffs to sue, do so pursuant to Rule 20 regardless of whether they file the action together initially or join together subsequent to initiation of the suit. See, *e.g.*, 7 Charles Alan Wright et al., *Federal Practice and Procedure* § 1654 (3d ed. 2001); *United States* v. *Mississippi*, 380 U.S. 128, 142 (1965) (complaint joined multiple parties under Rule 20); *Rosmer*, 263 F.3d at 116. One therefore cannot read subsection (b)'s exclusions as applying only after the initiation of the suit.

Even if one did so, moreover, its exclusions would be superfluous under petitioner's understanding of the law. Under petitioner's view, subsequently added parties or claims that do not meet both of Section 1332's jurisdictional requirements—no less than such parties or claims in the original complaint—destroy the original jurisdiction that is a necessary predicate to supplemental jurisdiction under Section 1367(a). See, *e.g.*, Pet. Br. 23, 27. Under that view, Section 1367(a) would exclude supplemental jurisdiction over any claims that did not satisfy the jurisdictional requirements of Section 1332, Pet. Br. 25—*i.e.*, any claims for which *supplemental*, as opposed to original, jurisdiction could be relevant in a diversity case. Under that view of Section 1367(a), there would have been no need for Congress to parse through the various joinder mechanisms and devise the carefully reticulated and differentiated scheme of exclusions set forth in Section 1367(b). In fact, Congress could have dispensed with subsection (b) altogether.

B. Petitioner's Reliance On Policy Arguments And Legislative History Provides No Basis For Overriding The Plain Language Of The Statute

1. *Applying the statute by its terms does not lead to "absurd consequences"*

Petitioner contends that "if § 1367(a) is interpreted to authorize supplemental jurisdiction over unnamed plaintiffs whose claims do not meet the minimum-amount requirement," Pet. Br. 26, then the statute will have "absurd consequences," including the demise of the "*Strawbridge* rule." *Id.* at 27 (citing *Strawbridge*, 7 U.S. (3 Cranch) at 267-268). Petitioner's concerns are not well-founded.

In the first place, it is far from clear that the plain-language interpretation of Section 1367 would affect the rule announced in *Strawbridge*, which (despite petitioner's suggestion to the contrary (Pet. Br. 27)) relates only to the diversity-of-citizenship requirement. It certainly would have no effect on the claims of unnamed class members; this Court's decision in *Ben-Hur* made the complete diversity rule inapplicable to unnamed plaintiffs. See 255 U.S. at 365-367. And, with respect to plaintiffs joined together under Rule 20, there is a crucial distinction between the complete diversity requirement and the amount-in-controversy requirement, in that the former necessarily applies to the case as a whole, whereas the latter applies on a plaintiff-by-plaintiff basis, *i.e.*, there is no "complete amount-in-controversy" requirement. *Zahn*, 414 U.S. at 294-295; see pp. 12-14, *supra*. When complete diversity is lacking, a district court lacks original jurisdiction over all aspects of the case, but the inability of one plaintiff to meet the amount-in-controversy requirement does nothing to affect the court's jurisdiction over the claims of a co-plaintiff who does satisfy that

requirement.[6] Accordingly, while the issue is not presented here, the Court might well conclude in an appropriate case that, with respect to named parties, the complete diversity requirement survived the enactment of Section 1367 because the joinder of a nondiverse named party (unlike the joinder of a party whose claims fall below the jurisdictional amount) destroys the court's original jurisdiction over the case *as a whole*.

In any event, even if Section 1367 were construed to authorize joinder of nondiverse named parties, it would not make major inroads into *Strawbridge*. As Judge Easterbrook explained, Section 1367(b) draws important lines with respect to protecting the complete-diversity rule. See *Stromberg Metal Works, Inc.* v. *Press Mech., Inc.*, 77 F.3d 928, 932 (7th Cir. 1996). For example, even assuming arguendo that Section 1367(b) might allow claims *by* parties joined under Rule 20 to proceed without regard to diversity of citizenship, claims *against* nondiverse persons made parties under Rule 20 are expressly forbidden. See *ibid.* Thus, the supplemental jurisdiction statute would not allow a citizen of Illinois to sue a citizen of Indiana under the diversity statute and then add a citizen of Illinois as a supplemental defendant. See *ibid.* Likewise, other exceptions in subsection (b) prevent the use of supplemental jurisdiction with respect to nondiverse, indispensable parties—whether plaintiffs or defendants—because subsection (b) does not allow claims *by* or *against* persons who join as necessary parties under Rule 19 or who intervene pursuant to Rule 24 when the joinder would be inconsistent with the requirements of the diversity statute. See 28 U.S.C. 1367(b).[7] "As written, § 1367(b) keeps cases of this kind out of federal court entirely, just as *Strawbridge* does." *Stromberg*, 77 F.3d at 932. Although, as Judge Easterbrook observed, *ibid.*, the wisdom of those lines has been subject to extensive debate, there is no basis for a court to disregard them.

Thus, even if applying the lines drawn by Congress would erode the rule of *Strawbridge* in part, there would be no cause for concern. With respect to absent class members, it would erode nothing, given the longstanding rule of *Ben-Hur*. In the Rule 20 context, the result would simply be that a federal forum would be provided to plaintiffs and defendants in certain instances in which there is minimal rather than complete diversity—the same result that already occurs on a much broader scale in the class-action context.

To be sure, reading the statute by its terms allows supplemental jurisdiction over certain claims not meeting the jurisdictional amount for which there would be no original jurisdiction under *Zahn* and *Clark*. But far from being absurd, Congress's creation of *supplemental* jurisdiction in the circumstances of *Zahn* makes perfect sense and aligns the amount-in-controversy requirement with *Ben-Hur*'s rule regarding the diversity-of-citizenship requirement. The dissent in *Zahn*—as well as the great weight of academic commentary since *Zahn*—recognize the benefits of

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[6] As noted above (note 2, *supra*), the jurisdictional defect created by the joinder of nondiverse parties can in some circumstances be corrected nunc pro tunc so as to preserve the court's ability to resolve the claims of diverse parties. That does not change the fact, however, that the court lacks original jurisdiction over *any* aspect of the case in the absence of such a correction. See *Newman-Green*, 490 U.S. at 827, 836-837 (holding that appellate courts had the authority to dismiss dispensable, nondiverse parties "whose presence spoils statutory diversity jurisdiction" so that the merits of the claims relating to the diverse parties could be decided on appeal); see also *id.* at 840 (Kennedy, J., dissenting) (describing the dismissal of a nondiverse party as "creating jurisdiction where none existed before"). The same is not true when some but not all of the plaintiffs merely fail to satisfy the amount-in-controversy requirement. See pp. 12-14, *supra* (discussing *Clark*).

[7] Those exceptions protect the complete diversity rule in the context in which this Court has suggested that jurisdictional defects cannot even be corrected nunc pro tunc, namely, with respect to claims by or against indispensable parties. Cf. note 2, *supra*; *Horn* v. *Lockhart*, 84 U.S. (17 Wall.) 570, 579 (1873).

allowing supplemental jurisdiction over such claims. See *Zahn*, 414 U.S. at 306-312 (Brennan, J., dissenting) ("[D]enial of ancillary jurisdiction will impose a much larger burden on the state and federal judiciary as a whole, and will substantially impair the ability of the prospective class members to assert their claims."); see also, *e.g.*, Richard D. Freer, *The Cauldron Boils: Supplemental Jurisdiction, Amount In Controversy, and Diversity of Citizenship Class Actions*, 53 Emory L.J. 55, 62-63 (2004) ("[T]he overwhelming weight of academic commentary harshly criticizes *Zahn*.") (footnote omitted). And, with respect to actions involving individual joinder, the rule of *Clark* would be preserved for all of the instances covered by the subsection (b) exceptions. As a leading treatise has observed, when construed in this manner, Section 1367's "extension of supplemental jurisdiction is severely limited in certain diversity cases by subsection (b)," 16 James Wm. Moore, *Moore's Federal Practice* § 106.05[2], at 106-24 (3d ed. 2004) (*Moore's*), and, "[i]n most instances, the statute mirrors prestatutory common law practice," *id.* § 106.40, at 106-55.

Furthermore, this interpretation of Section 1367 would not burden federal district courts with claims that, in the judgment of the district court, ought to be decided elsewhere. Even if the minimum requirements for supplemental jurisdiction are satisfied, Section 1367 expressly provides district courts with discretion to decline to exercise that jurisdiction. 28 U.S.C. 1367(c); see 16 *Moore's* § 106.05[4], at 106-27 ("Subsection (c) of Section 1367 codifies the discretionary factors that justify a refusal to exercise supplemental jurisdiction."). That discretion will protect federal courts from having to resolve claims that raise "novel or complex issue[s] of State law" or that "substantially predominate[]" over the original jurisdiction claims. 28 U.S.C. 1367(c). A district court also can decline to exercise supplemental jurisdiction if it has dismissed the claims over which it has original jurisdiction. 28 U.S.C. 1367(c). Finally,

"in exceptional circumstances," a court can decline to exercise its supplemental jurisdiction if "there are other compelling reasons" for doing so. 28 U.S.C. 1367(c). As this Court recognized in *City of Chicago*, "[t]he statute thereby reflects the understanding that, when deciding whether to exercise supplemental jurisdiction, a federal court should consider and weigh in each case, and at every stage of the litigation, the values of judicial economy, convenience, fairness, and comity." 522 U.S. at 173 (citation and internal quotation marks omitted).

2. *Affording supplemental jurisdiction here serves the congressional purposes of fostering the efficient resolution of disputes and of providing a neutral federal forum to resolve substantial controversies*

In an attempt to bolster its counter-textual reading of the statute, petitioner points to four alleged "rules" of statutory construction that are actually little more than policy arguments. See Pet. Br. 31-33. As discussed above, however, Congress drew important lines in subsections (b) and (c) that limit Section 1367(a)'s broad grant of supplemental jurisdiction in diversity cases. Those lines reflect Congress's policy judgments and define the federal courts' jurisdiction. As the Court observed in *Finley*, if Congress decides that the plain import of the statutory text is inconsistent with its policy preferences, "the scope of jurisdiction conferred * * * can of course be changed by Congress." *Finley*, 490 U.S. at 556. Section 1367 should therefore be read, as its plain text dictates, to allow supplemental jurisdiction over the claims of class members that do not meet the jurisdictional amount.

Reading the statute in accordance with its terms will further the congressional purposes underlying both Section 1367 and the diversity jurisdiction statute more generally. First, allowing the inclusion of the related claims of unnamed class members whose claims do not meet the jurisdictional

amount promotes the efficient resolution of disputes, both for parties and for the federal and state court systems. Those efficiency benefits are extolled in the legislative history of Section 1367. As the House Report noted, "[s]upplemental jurisdiction has enabled federal courts and litigants to take advantage of the federal procedural rules on claim and party joinder to deal economically—in single rather than multiple litigation—with related matters, usually those arising from the same transaction, occurrence, or series of transactions or occurrences." H.R. Rep. No. 734, *supra*, at 28; *ibid.* ("[T]he district court's exercise of supplemental jurisdiction, by making federal court a practical arena for the resolution of an entire controversy, has effectuated Congress's intent in the jurisdictional statutes to provide plaintiffs with a federal forum for litigating claims within original federal jurisdiction.").[8]

Second, allowing supplemental jurisdiction over the related claims of unnamed plaintiffs that do not meet the jurisdictional amount is consistent with the general purpose of diversity jurisdiction. The purpose of the diversity jurisdiction statute, including its amount-in-controversy requirement, is to provide a neutral federal forum for the adjudication of substantial controversies involving diverse parties. Congress included the amount-in-controversy requirement in the original diversity jurisdiction statute, and subsequently adjusted the amount, to reserve the federal courts' diversity jurisdiction for cases that are relatively substantial in monetary terms. See 15 *Moore's* § 102.109[3], at 102-199. Because original jurisdiction over the claims of at least one

[8] Accord *Report to the Federal Courts Study Committee of the Subcommittee on the Role of Federal Courts and Their Relation to the States* (Mar. 12, 1990), *reprinted in* 1 *Federal Courts Study Committee, Working Papers and Subcommittee Reports* 547 (July 1, 1990) ("Supplemental jurisdiction facilitates the joinder in litigation of all claims arising out of the same transaction. The benefits in judicial economy and in party and witness convenience are apparent.").

plaintiff is a prerequisite to the exercise of supplemental jurisdiction, every diversity case in which supplemental jurisdiction is exercised over an unnamed plaintiff who does not independently satisfy the amount-in-controversy requirement will necessarily entail a substantial controversy. The joinder of additional class members with injuries from the same transaction or occurrence only enhances, rather than detracts from, the significance of the controversy. The supplemental jurisdiction statute will simply allow a neutral federal forum for adjudication of additional claims that are part and parcel of that substantial controversy. See *Stromberg*, 77 F.3d at 932 (noting that the statute's "[c]losely related" requirement is a "vital qualification"). That result creates no cause for concern, and provides no possible justification for overriding the plain text of the statute.[9]

3. *Petitioner's resort to legislative history cannot overcome the plain meaning of the text*

As its last refuge, petitioner looks to legislative history. Given the plain language of Section 1367, however, resort to the statute's legislative history is unnecessary. Pet. App. 30a-32a. As this Court has recognized, "reference to legislative history is inappropriate when the text of the statute is

[9] Contrary to petitioner's argument (Pet. Br. 32-33), that result does not encroach on state sovereignty. Article III authorizes unlimited federal diversity jurisdiction; the amount-in-controversy requirement is not a principle of state sovereignty but rather a congressional policy judgment that certain insignificant monetary claims ought not be brought in federal court (a point underscored by the longstanding amount-in-controversy requirement for federal question cases). Nothing in the statute affects the rule against aggregation—that is, if all of the plaintiffs have claims of insufficient jurisdictional amounts, those claims must be tried in state court. See, *e.g.*, *Snyder* v. *Harris*, 394 U.S. 332 (1969). Even under petitioner's view, state-law claims can be tried in federal court if they satisfy the jurisdictional amount; exercising supplemental jurisdiction simply allows other claims that are part and parcel of the same controversy to be tried at the same time.

unambiguous." *Department of Hous. & Urban Dev.* v. *Rucker*, 535 U.S. 125, 132 (2002); see *BedRoc Ltd.* v. *United States*, 124 S. Ct. 1587, 1595 & n.8 (2004).

Petitioner primarily seeks support from several statements in a House Committee Report. Pet. Br. 37-40. Petitioner emphasizes language from the report to the effect that "[i]n diversity cases, the district courts may exercise supplemental jurisdiction, except when doing so would be inconsistent with the jurisdictional requirements of the diversity statute." H.R. Rep. No. 734, *supra*, at 28. Petitioner also relies heavily on a sentence stating that the bill did not "intend[] to affect the jurisdictional requirement of 28 U.S.C. § 1332 in diversity-only class actions," with an accompanying footnote citing *Zahn* and *Ben-Hur*. See H.R. Rep. No. 734, *supra*, at 29 & n.17.

The statements relied upon by petitioner cannot be squared with the statutory text. Section 1367(b) forbids inconsistency with the requirements of the diversity statute only in the instances set forth, not in all cases. To give broad effect to those general statements in the legislative history would render the notion of *supplemental* jurisdiction in diversity cases a dead letter. Further, it would render the specifically delineated exceptions set forth in the body of subsection (b) superfluous.

The reference to *Zahn* and *Ben-Hur* is also impossible to reconcile with the text. As one leading commentator has observed, "assuming that Congress did in fact intend to codify both *Ben-Hur* and *Zahn*, there exists no rational construction of the text of the statute that could dictate that result." 16 *Moore's*, at § 106.44, at 106-63. Moreover, the law professors responsible for that snippet of legislative history have admitted that "on its face, section 1367 does not appear to forbid supplemental jurisdiction over claims of class members that do not satisfy section 1332's jurisdictional amount requirement, which would overrule *Zahn*[.] * * * It would have been better had the statute dealt explicitly with this

problem, and the legislative history was an attempt to correct the oversight." Thomas D. Rowe, Jr. et al., *Compounding or Creating Confusion About Supplemental Jurisdiction? A Reply to Professor Freer*, 40 Emory L.J. 943, 960 n.90 (1991). That is a considerable understatement. Statutory text cannot be amended in its legislative history.

In any event, the legislative history is considerably less clear than petitioner suggests. The historical record reveals that "some of those involved in drafting § 1367 both knew that the language chosen for § 1367 would overrule *Zahn* and approved of that result on policy grounds." *Gibson*, 261 F.3d at 940. A subcommittee of the Federal Courts Study Committee, which produced a report that was the impetus for the Judicial Improvements Act of 1990, proposed text that, like Section 1367, contained a broad grant of supplemental jurisdiction in subsection (a), followed by exceptions in subsection (b) applicable in diversity cases (with no mention of Rule 23), and a third subsection providing district courts with discretion to decline to exercise supplemental jurisdiction. *Report to the Federal Courts Study Committee of the Subcommitee on the Role of Federal Courts and Their Relation to the States* (Mar. 12, 1990), *reprinted in* 1 *Federal Courts Study Committee, Working Papers and Subcommittee Reports* 567-568 (July 1, 1990). Significantly, the subcommittee, which was chaired by Judge Posner, recognized that the text of its proposal would expand federal jurisdiction beyond that allowed by the result in *Zahn*. See *id.* at 561 n.33.[10] And the subcommittee approved of that result, explaining that the result in *Zahn* "makes little sense" from

[10] Indeed, Judge Posner has concluded that Section 1367 as enacted permits a district court to exercise supplemental jurisdiction over the claims of both named and unnamed plaintiffs that do not satisfy the amount-in-controversy requirement, as long as one plaintiff meets the jurisdictional minimum. See *In re Brand Name Prescription Drugs Antitrust Litig.*, 123 F.3d 599, 607 (7th Cir. 1997), cert. denied, 522 U.S. 1153 (1998).

"a policy standpoint." *Ibid.* Contrary to petitioner's contention (Pet. Br. 35), the Federal Courts Study Committee did not reject the subcommittee's proposal. See *Report of the Federal Courts Study Committee* 47-48 (Apr. 2, 1990). And the fact that the subcommittee's proposal is "strikingly similar" to the text of Section 1367 as enacted, *Gibson*, 261 F.3d at 937, lends still further support to the conclusion that Section 1367 allows supplemental jurisdiction over the claims of class members that do not meet the jurisdictional amount.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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APPENDIX

1. Section 1367 of Title 28 of the United States Code provides in relevant part:

§ 1367. Supplemental jurisdiction

(a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

(b) In any civil action of which the district courts have original jurisdiction founded solely on section 1332 of this title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.

(c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if—

(1) the claim raises a novel or complex issue of State law,

(2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,

(3) the district court has dismissed all claims over which it has original jurisdiction, or

(4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

2. Section 1332 of Title 28 of the United States Code provides in relevant part:

§ 1332. Diversity of citizenship; amount in controversy; costs

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between—

(1) citizens of different States;

(2) citizens of a State and citizens or subjects of a foreign state;

(3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and

(4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

For the purposes of this section, section 1335, and section 1441, an alien admitted to the United States for permanent residence shall be deemed a citizen of the State in which such alien is domiciled.